15-7-212

Office Supreme Court, U. S.
FILED.
DEC 14 1894
JAMES H. McKENNEY,
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IN

The Supreme Court

OF THE

United States.

LUCIEN BAKER,
Appellant,
vs.
SAMUEL N. WOOD, GEORGE TAYLOR, ADMINISTRATOR, E. M. HULBURD AND DANIEL E. PARKS,
Appellees.

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Brief of Counsel for Appellees Wood and Taylor, Administrator of N. P. Seeley, Deceased.

EDWARD O. WOLCOTT,
JOEL F. VAILE,
WILLIAM W. FIELD,
Solicitors for Appellees, S. N. Wood, and Seeley's Administrator.

C. J. KELLY, Printer, Denver.

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The leading and material facts of this case, as disclosed in the evidence, are, briefly, as follows:

That on or about the 12th day of November, 1883, the said Baker recovered a judgment for the sum of $15,982.70 against the County of Lake; that from the date of the recovery of said judgment until the 25th day of May, 1886, said Baker person

ally, by his business agents, and by his attorneys at law, had made continuous and vigorous efforts, both by negotiations out of Court and by actions at law, and other proceedings in Court, to realize upon, and enforce the payment of, this judgment; that every expedient which the ingenuity of his counsel, or the astuteness and cunning of his business agents could suggest, had been tried, but all in vain. After three years of continuous effort, he had wholly failed to make said judgment available, and, at the end of that period, there seemed to be even less prospect than at its beginning that said judgment was, or ever would be, of any actual value, or that the said Baker would ever be able to collect it.

In the spring of 1886 the said Baker seems to have become convinced that the County Commissioners of Lake County entertained a personal animosity against him, and that if said County Commissioners could be led to believe that this judgment was no longer his, they would probably take some steps to pay it, without regard to the fact that the said County was wholly insolvent, and the further fact that having already far exceeded its constitutional limit of indebtedness, it was beyond the reach of coercion. Acting upon this idea, and for the purpose of deceiving said Commissioners and making it appear that he no longer had any interest in said judgment, he made, executed and delivered to E. M. Hulburd the following assignment thereof:

"LEAVENWORTH, KANSAS, May 25th, 1886.

"For value received I hereby sell, assign, transfer and set over to E. M. Hulburd all my right,

title, interest, claim and demand, of, in and to the within described judgment, and the money due and to become due thereon, and authorize him to sue for and collect the same at his own proper cost and expense. LUCIEN BAKER."

Which said assignment was duly endorsed upon a certified transcript of said judgment, and was acknowledged before a Notary Public in Leavenworth, Kansas, on the said 25th day of May, 1886. This assignment was filed and entered of record in the Clerk's office of the United States Circuit Court for the District of Colorado, in which said judgment had been obtained and was of record. A few days after said Baker had thus assigned his judgment to E. M. Hulburd, he took a receipt therefor from said Hulburd, which stated that said assignment was made for convenience of collecting the same, and that said Baker still retained the ownership and control of the said judgment. This receipt, however, was carefully kept secret, both by said Baker and by Hulburd, and also by Baker's business agents, to whom it was shortly afterwards transmitted. Even after Baker and his agents became suspicious that Hulburd might play him false, and even after they became aware that the said assignment of May 25th had been filed and entered of record as aforesaid, and that thereby the said Hulburd stood before the whole world as the absolute owner of said judgment, said Baker and his agents continued to conceal said receipt, and did not offer it for record, nor take any steps to have the record show that Hulburd's title to said judgment was qualified or limited in any respect. Shortly thereafter, on or about the 19th

day of June, 1886, the said Hulburd did, for value received, absolutely assign and transfer said judgment to the appellee S. N. Wood, who purchased without any notice of the secret agreement between Baker and Hulburd, or that said Baker still retained any interest in said judgment, and who also paid the full market value of said judgment. Hulburd, it seems, appropriated the money paid by Wood, and absconded. The said Wood promptly caused the assignment of said judgment to him to be noted upon the judgment docket of said Court.

The appellant now claims that the said appellees Wood and Seeley took said judgment subject to his secret equities therein, notwithstanding they had no notice thereof, and paid value for said judgment.

The evidence fully establishes the fact that Wood and Seeley were *bona fide* purchasers without notice. So far as Wood is concerned, Hulburd had never, prior to his purchase of this judgment, seen him, nor spoken to him, nor communicated with him. The appellant attacks the *bona fides* of Wood by attempting to show that Parks was his agent, and that Parks had notice of Baker's equity in said judgment; both Wood and Parks positively deny that Parks at any time sustained the relation of agent to Wood, or any other relation, and the evidence introduced by the appellant was wholly insufficient to establish such agency in Parks. Furthermore, if we leave out the testimony of Hulburd, then the evidence offered on behalf of the plaintiff below entirely failed to establish, and Parks positively denies that he (Parks) knew of Baker's secret interest in said

judgment, or that Hulburd was not the real owner thereof. Hulburd's testimony upon this point was objected to, and was wholly incompetent and inadmissable against his assignees, Seeley and Wood.

Garland v. Harrison, 17 Mo., 282.

It is nowhere shown that Seeley had any notice of Baker's secret interest in this business. Even Hulburd says (printed record, p. 86):

"So far as the defendant Wood is concerned, I do not think I ever saw him, and am not acquainted with him, and never was. I do not recollect ever speaking to Mr. Seeley more than once, in relation to the matter. That was shortly after his return from California, and nothing was said in that conversation except with reference to the price that Mr. Wood was willing to pay for the judgment. I can't recollect now what our conversation was, with reference to the price, but I know that it was nothing except conversation on that subject."

Nothing, then, is more clearly established by the evidence than that Seeley and Wood had no knowledge or notice of the secret interest which Baker still retained in the judgment. They do not seem ever to have suspected that any such condition of affairs existed. Having seen Baker's assignment, over his own signature, to Hulburd, it does not seem to have occurred to them, and hardly would, to any reasonable man, that Baker still retained the ownership and control of said judgment; but they do seem to have been suspicious that Hulburd might not deal fairly with them; they seem to have feared that after they had purchased this judgment, they might find out that Hulburd had transferred it to some one else, and for that reason Hulburd was required by Mr. Seeley to assure him, both orally and in writing, that he was

the owner of this judgment at the time he assigned it to Wood, and took the further precaution to telegraph, at the last moment, to the Clerk of the United States Circuit Court, and satisfy himself that Hulburd had not transferred the judgment to any one else. Having taken all these precautions, Seeley thereupon paid $2,500 in cash for said judgment, and took a full and absolute assignment thereof to the appellee Wood.

Counsel for appellant, catching at every straw, contends that the mere fact that Wood and Seeley paid only $2,500 for this judgment, is proof positive that they were not *bona fide* purchasers thereof, but that they knew that they were purchasing a thing which Hulburd had no right to sell. We respectfully submit that the evidence shows that said Wood and Seeley paid the full value for said judgment at the time they purchased it. For nearly three years Baker had used every method that the ingenuity of man could suggest to enforce this judgment. It was well known that the indebtedness of Lake County was at that time far in excess of the constitutional limit. Hulburd's testimony, if it establishes anything, establishes the fact that at the time of its purchase by Wood and Seeley, this judgment had little or no actual value, and that there was, apparently, little prospect that it ever would become collectable. The testimony of Parks and of Wood is, that such judgments against Lake County were then being offered on the market, and that from ten to twenty cents on the dollar was the utmost that could be obtained for them. Parks says (printed record, pp. 113 and 126), that this judgment "was worth very little," "not more than

one thousand dollars;" that he "would not have invested one thousand dollars in it." Now, deducting from this judgment the portion owned by John Alfred, and which did not pass to Wood and Seeley under their purchase, it will be seen that Wood and Seeley paid for this judgment something over twenty per cent of its face value, and even at that figure they were taking long chances of ever getting their money back. The fact that, subsequently, by making large concessions and by submitting to long delays, they have succeeded in collecting a large part of this judgment, does not even tend to show that $2,500 was, at the time of the purchase, so wholly inadequate as to be proof positive of *mala fides*.

Harmon v. Hope, 87 N. Y., 10.

Inglehart v. The Thousand Island Hotel Co., 32 Hun., 377.

2 Black on Judgments, Sec. 948.

The evidence, then, fully establishes the fact that Seeley and Wood were purchasers for value and without notice. The Court below so found, and the counsel for the appellant, we believe, so recognizes, although there is in their brief some attempt to contort the evidence (the inadmissible as well as the admissible) into such a shape as to permit the suggestion of a possibility that Wood and Seeley ought "to have suspected" a latent equity in the appellant.

The appellant, in his brief, bases his contention upon three propositions of law, as follows: 1. That the assignee of a judgment takes only an equitable title thereto, the legal title remaining in the assignor. 2. That the assignee of a judgment

takes the same subject to all the equities which any person or persons may have had therein in the hands of his immediate assignor. 3. That the Court below erred in holding that Baker was, by said assignment of May 25th, 1886, estopped from asserting, as against Seeley and Wood, that he was the owner of this judgment, and that title thereto had never passed from him to Hulburd.

We will change somewhat the order of discussion taken by the appellant, and discuss the last proposition first, since we think that the principle of estoppel is pre-eminently applicable to this case, and that the proper application of this principle thereto finally settles and disposes of it in favor of the appellees, Wood and Seeley, and sustains the decision of the Court below.

I.

As against the *bona fide* purchaser, without notice, the law is beyond contention that "a man cannot deny the validity of a sale made by a person whom he has enabled to hold himself out to the world as the owner, or duly authorized to sell."

2 Hermann on Estoppel, Sec. 977, and citations.

"Where the owner holds out another, or allows him to appear as the owner of, or as having full power of disposition over the property, and innocent third parties are led into dealing with such apparent owner, they will be protected. Their rights, in such cases, do not depend upon the actual title or authority of the party with whom they deal directly, but are derived from the act of the real owner, which precludes him from disputing, as against them, the existence of the title or power which, through negligence or mistaken confidence,

he caused, or allowed to appear, to be vested in the party making the sale or conveyance."

2 Hermann on Estoppel, Sec. 978.

"One who wilfully or negligently enables another to hold himself out to the world as the owner, by furnishing him with documentary evidence of title, * * * will be estopped as against the purchaser who gives value in the belief that the apparent ownership is real."

2 Hermann on Estoppel, Sec. 979.

Now, this is exactly the condition in which Mr. Baker has placed himself in regard to these appellees. Over his own signature he furnished E. M. Hulburd with documentary evidence of absolute title to said judgment. It is hardly possible that words could be selected or arranged so as to set forth more strongly and unqualifiedly the absolute assignment of this judgment. This document was delivered to E. M. Hulburd and published to all the world. The secret receipt which Baker required Hulburd to give him, and which contained a record that Baker had authorized and empowered Hulburd to publish a fasehood, in hopes that he (Baker) might clandestinely obtain an advantage thereby, was kept a profound secret in the pockets of himself and his agent Higginbottom, and was never brought to light or to the notice or knowledge of Wood or Seeley until after they had purchased this judgment and paid their money therefor, relying upon the *indicia* of ownership with which Baker had invested Hulburd.

Again—

"It is a well settled rule that where one of two innocent persons must suffer from the tortuous act of a third, he who gave the wrongdoer the means

of perpetrating the wrong must bear the consequences of the act. By placing the papers in the hands of his agents and attorneys, the mortgagor gave him the means of making sale of the mortgage and of obtaining the money of the assignee. The fraud which the attorney may thereby have practiced on the mortgagor cannot operate to the prejudice of the innocent and *bona fide* purchaser."

2 Hermann on Estoppel, Sec. 904, p. 1026.

Ibid, Sec. 766, and citations.

"Fraud means an intention to deceive. Where one has made a false representation, knowing it to be false, the law infers that he did so with an intention to deceive. If a person tells a falsehood, the natural and obvious consequence of which, if acted on, is injurious to another, that is fraud in law. * * * Thus, one who represented to the defendants, who were endeavoring to compromise their indebtedness, that E was the owner of a certain judgment against them, in reliance on which representations they compromised it with E, paid a part, and took a discharge, was held estopped to assert his own title to the judgment, and bound by the discharge, notwithstanding payment in full was not made."

2 Hermann on Estoppel, Sec. 780.

Blair v. Waite, 69 N. Y., 113.

"A party who places another in a position to enable him to commit a fraud, should suffer the loss rather than an innocent person who deals with him on the faith of the usual *indicia* of ownership with which the true owner has invested him."

2 Hermann on Estoppel, Sec. 769.

The appellant, according to the testimony of his witnesses, gave Hulburd the assignment of May 25th, 1886, with the intention of deceiving and hoodwinking other persons in regard to the ownership of this judgment. Having authorized and empowered Hulburd to deceive others, he was him-

self betrayed by him. It is simply another exemplification of the old story of "The Biter Bitten." He does not even come under the category of one of two "innocent parties," as referred to in the above quotations. He intended to deceive others, and cannot now be permitted to unload his burden upon innocent third parties, on the ground that he has been betrayed by the man whom he himself invested with an apparently absolute and unqualified ownership of title to this judgment.

"Whatever a man's real intentions may be, if he manifest any intention to another party so as to induce the latter to act upon it in making the contract, he will be estopped from denying the intention as manifested was his real intention. A party to an alleged contract cannot escape the natural and reasonable interpretation of the language used, or the acts done by him, by showing that the language was used or the acts done with a different and undisclosed intent."

Hermann on Estoppel, Sec. 777, and citations in n. 1.

In the case of Garland v. Harrison, 17 Mo., 282, Garland was the owner of a judgment, which he caused to be transferred to Crow, absolutely and unconditionally, taking from Crow a receipt showing that Garland in fact owned an interest in said judgment. Crow sold the judgment to Harrison without his having any knowledge of Garland's interest in the judgment. Upon suit then by Garland against Harrison, it was held that Harrison must hold the judgment against Garland, the Court saying:

"Garland by his own act put it into the power of Crow to show himself the purchaser and owner. He must then be bound by Crow's acts in this mat-

ter. He gave to Crow the authority to do the deed, and when done, Garland will not be permitted to set it aside against an innocent purchaser without notice."

In the case of McNeil v. The Tenth National Bank of New York, 46 N. Y., 325, the Court says:

"It must be conceded that, as a general rule, applicable to property other than negotiable securities, the vendor or pledgor can convey no greater right or title than he has. But this is a truism predicable of a simple transfer from one party to another when no other element intervenes. It does not interfere with the well established principle that where the true owner holds out another, or allows him to appear as the owner of, or as having full power of disposition over the property, and innocent third parties are thus led into dealing with such apparent owner, they will be protected. Their rights in such cases do not depend upon the actual title or authority of the party with whom they deal, but are derived from the act of the real owner, which precludes him from disputing as against them the existence of the title or power which, through negligence or mistaken confidence, he has caused or allowed to appear to be vested in the party making the conveyance. Citations."

In the case of Moore v. The Metropolitan National Bank, 55 N. Y., 41, it was held:

"A purchaser for value of a non-negotiable chose in action from one upon whom the owner has by assignment conferred the apparent absolute ownership, where the purchase is made upon the faith of such apparent ownership, obtains a valid title as against the real owner, who is estopped from asserting a title in hostility thereto."

In this opinion the Court comments upon explains, and materially modifies the proposition of law laid down in Bush v. Lathrop, 22 N. Y., 535,

which is so confidently relied upon by counsel for the appellant in the case at bar.

In Dillaye v. The Commercial National Bank of Whitehall, 51 N. Y., 345, it was held:

"A *bona fide* purchaser of a mortgage for valuable consideration, without any notice, express or implied, of any trust therein in favor of the plaintiff, and, consequently, without notice or knowledge that the sale to it was made in contravention or violation of such trust, acquired a perfect title thereto, free and discharged of all trusts and equities with which it was charged in the hands of Dillaye."

See, also—

McCotter v. McCotter, 16 Abb. Pr., 265.
Davis v. Bechstein, 69 N. Y., 440.

But appellant contends that even if he is estopped from setting up his title against Wood and Seeley, nevertheless that estoppel goes only to the extent of requiring him to refund to them the $2,500 which they paid for this judgment. We submit that this is not the law, and that the authorities cited in the appellant's brief upon this point do not bear him out in this position. The rule in such cases as the one at bar is, that "the estoppel, created by a false representation acted upon, is commensurate with the thing represented, and operates to put the party entitled to the benefit of the estoppel in the same position as if the thing represented was true."

Hermann on Estoppel, Sec. 778, and citations in note 2, page 903.

Baker, therefore, being estopped to assert any interest or title in this judgment contrary to or contradictory of his assignment of May 25th, 1886,

to Hulburd, Seeley and Wood are, as to said judgment, in exactly the same position as if the secret receipt from Hulburd to Baker had never been given, and as if Hulburd had been, indeed, the absolute and unqualified owner of said judgment. Unquestionably, Hulburd could not demand that Wood and Seeley should refund to him all the benefit they have received under said judgment, over and beyond the sum of $2,500. His sale and assignment to them carried with it the absolute ownership of said judgment and of all the benefits that might thereafter accrue from such ownership, free and discharged from any claim or interest, present or future, therein, by the said Hulburd. Baker, who clothed Hulburd with the power and authority to act as he did, is bound by those acts to the same extent exactly as if Hulburd's apparent rights and ownership had been real.

We submit, therefore, that by the doctrine of estoppel, the appellant is entirely precluded from any recovery in this case.

II.

But, independent of the doctrine of estoppel, we contend that Wood and Seeley, under their assignment from Hulburd, took a better title to this judgment than Baker retained. The generally recognized doctrine is that the *bona fide* assignee of a judgment takes it subject to all the equities to which the *judgment debtor* is entitled prior to notice of the assignment, but that said judgment in the hands of the assignee is not chargeable with equities to which other parties are entitled, unless

the assignee had notice of those equities when he took the assignment of the judgment.

The case of Duke v. Clark, 58 Miss., 465, arose out of the assignment of a judgment, and the Court held:

"The assignee of a *chose in action* takes it subsubject to the equities to which it was subject in the hands of the assignor; but the equities meant are such as obtain in favor of the debtor and not those claimed by a third person against the assignor."

The Court also say:

"It is certainly true that an assignee cannot acquire any greater right, *as against the judgment debtor*, than his assignor had, but a different question is presented as to whether notice consisting of matters *in pais*, which may affect the knowledge and bind the conscience of the assignor *as against some third person* other than the debtor, shall be held to extend in its consequences to his innocent assignee who acts upon the faith of the records. The records should be a safe guide to one who trusts to them, having no notice that they do not represent the real state of the title; and he should not be affected by the mere knowledge had by the assignor of some secret inaccessible to the observation of those not possessed of it."

In Robeson v. Roberts, 20 Ind., 155, the Court says:

"We think that the assignee of a judgment, under our statute, takes it subject to whatever equities exist in favor of the judgment debtor. We do not, however, decide that such assignee takes subject to equities in favor of third persons of which he has no notice. The difference between the two cases is clear and substantial. * * * Hence, it would seem that the assignee without notice should take the judgment free from the claims of such third persons."

In the case of Hendrickson's Appeal, 24 Pa. St., 363, a mortgagee made an agreement with the plaintiff in the judgment that the former should take precedence. This stipulation was not put in writing nor made a part of the record, but it was binding, nevertheless, between the parties who made it. The judgment was assigned for a valuable consideration without notice to the assignee of the parol promise to postpone it. The Court said:

"It is very firmly established that the assignee of a *chose in action* takes it subject to all the equities which affected the right of the original holder to recover it from the debtor. But it does not necessarily follow from this that the assignee is bound by a parol agreement not known to him, and which was intended to destroy the legal effect of the record. If I take an assignment in good faith, which the record shows to be the earliest lien on an insolvent estate, can a junior creditor who would otherwise get nothing, defeat me by producing a secret agreement like this between himself and my assignor? Without hesitation, we answer this in the negative."

In appeal of The Mifflin County National Bank, 98 Pa. St., 150, the Court says:

"It is very true that the assignee of a judgment or mortgage takes it subject to all the defenses of the obligor against the obligee; but it is equally true that he does not take it subject to the secret equities of third persons. This is a very familiar doctrine, and has been repeatedly enforced by this Court. In Davis v. Barr, 9 S. & R., 140, it was said by Gibson, J.: 'It certainly is not a general principle of equity that a purchaser for valuable consid-e-ation of the legal title to any kind of property should take it subject to an equity of which he had not notice.' And, again, on page 141: 'But with any agreement between the original parties incon-

sistent with the appropriate or legal effect of the instrument, the assignee had nothing to do. No such agreement is within the purview of the act; and the assignee is not bound to call on the obligor for information about matters, the existence of which he had no reason to suspect, the necessity of inquiry being limited, as I have said, to want of consideration and set-off.' In Mott v. Clark, 9 Barr, 404, it was said of the assignee of a bond and mortgage: 'He takes it subject to all the equities of the mortgagor, but not to the latent equity of a third person. To subject him to such an equity, he must have express or constructive notice at the time of the assignment.' Citations."

In Murray v. Lylburn, 2 Johnson Ch., *441, Chancellor Kent says:

"It is a general and well settled principle that the assignee of a chose in action takes it subject to the same equity it was subject to in the hands of the assignor. Citations. But this rule is generally understood to mean the equity residing in the original obligor or debtor, and not an equity residing in some third person against the assignor. He takes it *subject to all the equity of the obligor*, say the Judges in the very elaborately argued case of Norton v. Rose (2 Wash. Rep., 223 and 254), on this very point, touching the rights of the assignee of the bond. The assignee can always go to the debtor and ascertain what claim he may have against the bond or other *chose in action* which he is about purchasing from the obligee, but he may not be able with the utmost diligence to ascertain the latent equity of some third person against the obligee. He has not any object to which he can direct his inquiries, and for this reason, the claim of the assignee without notice of a *chose in action*, was preferred in the late case of Redfearn v. Ferrier (1 Dow Rep., 50) to that of a third person setting up a secret equity against the assignor. Lord Eldon observed in that case, that if it were not to be so, no assignments could ever be taken with safety. I am not aware that this decision was

the introduction of any new principle in the case of actual *bona fide* purchases or assignments *by contract;* though Lord Thurlow said in one case (1 Vesey, Jr., 249), that the purchaser of a *chose in action* must abide by the acts of the person from whom he buys; but he spoke this on a question between the assignee and the debtor."

Ses, also—

Wright v. Levy, 12 Cal., 257.
McCotter v. McCotter, 25 How. Pr., 478.
Livingston v. Dean, 2 Johnson Ch., *479.
Hale v. First National Bank, 50 Iowa, 642.
Starr v. Haskins, 26 N. J. Eq., 414.
James v. Morey, 2 Cowan, 246.
Greene v. Darling, 5 Mason (U. S. Cir. Ct.), 201.

Upon an examination of the authorities cited by appellee, upon this point, it will be seen that those citations, with two exceptions, to wit, Bush v. Lathrop, and Cutts v. Guild, in no way antagonize the decisions above quoted, and support, rather than contradict, the proposition we are here contending for. Upon an examination of said citations, in the light of the facts of each case, it will be seen that none of them go further than to say that the assignee of a *chose in action* takes it subject to the equities of the original obligor or debtor, even though such assignee had no notice thereof. But none of them, with the two exceptions above referred to, can be fairly construed to hold that such assignee takes subject to the equities of third persons, unless he was affected with notice of those equities.

The case of Bush v. Lathrop, 22 N. Y., 229, seems to go further, and to support the contention

of the appellant. But this case was expressly modified and overruled in the following cases: Moore v. The Metropolitan National Bank, 55 N. Y., 41; Armour v. Mich. Cent. R. R. Co., 65 N. Y., 111; Fairbanks v. Sargent, 104 N. Y., 108; and we think that it can safely be said that, in no subsequent decision of the New York Court, in which the case of Bush v. Lathrop is referred to, has the rule of law therein contended for been given, applied or indorsed in its entirety.

The case of Cutts v. Guild, 47 N. Y., 229, upon a hasty reading, would seem to support the contention of the appellants upon this point. But a more careful examination, we think, will satisfy the Court that this case is really not sufficiently in point to be an authority in the case at bar, and, further, that, taken in connection with the facts of that case, as disclosed by the report of the decision, it does not support the contention of the appellant.

Wood and Seeley, then, being *bona fide* purchasers, without notice of the secret equity in Baker, or in any other person, took this judgment subject only to such equities as the judgment debtor (the County of Lake) was entitled to, as against it at the time it was notified of the assignment to Wood and Seeley. Their equity was, at least, as strong as Baker's equity, and having, also, the record title, Baker, under the principle of *favorabilioris rei potius quam actores habentur* cannot prevail in this action. The appellant undertakes to avoid this by claiming that the legal title remained in Baker, and admits (appellant's brief, p. 7) that Baker's equity cannot prevail if the legal title was transferred to Wood and Seeley.

So far as regards *choses in action*, the "legal title" means that the beneficial owner has the right to sue thereon, in his own name, and the "equitable title" means that he is required to sue in the name of the original obligee.

Bush v. Lathrop, 22 N. Y., 535.

At common law the assignee of a *chose in action* could sue thereon only in the name of his assignor, and, therefore, it was said that the legal title remained in the assignor; but such assignor held this legal title for the benefit of the real party in interest, and he was not even at liberty to refuse to allow the equitable owner to use his name in the suit; if, by any procedure, the assignee became entitled to sue in his own name, then even the legal title was divested from the assignor and united with the equitable title in the assignee. This may be affected by direct statute, and also by implication of law; as, for instance, by putting the assignment of the *chose in action* upon record, and notifying the obligor therein of its assignment, especially when the instrument of assignment itself expressly confers on the assignee the right to sue therefor in his own name, as did the assignment of May 25, 1886, in the case at bar, thereby, when entered of record, completely transferring Baker's so-called "legal title" to his assignee, if the legal title can ever be transferred by an act of a party. Moreover, the statute of Colorado requires that every action shall be prosecuted in the name of the *real party in interest*. Under this statute Wood was not required to entitle his action in the name of Baker for his benefit, as common law required him to do. Indeed, the Colorado Courts would not have permit-

ted him so to do, but would have required him to sue in his own name. The effect of this statute, then, was to unite the legal title with the equitable ownership in Wood; and, therefore, we submit that both by the statutes of Colorado and by operation of law, the *legal*, as well as the *equitable*, title to this judgment became vested in Wood before he had any notice of the secret equity in Baker.

Judge Black, in his work on Judgments (Vol. 2, Sec. 940), says upon this point:

"As a consequence of this doctrine, it follows that wherever the rule is not changed by statute, the assignee of a judgment is powerless to maintain an action thereon. * * * To every such proceeding the assignor, as holding the legal title, must be a party. But the presence of the assignor on the record is merely formal. The assignee is the real party in interest. His equitable title is sufficient to entitle him to sue in the name of the asssignor whenever he may choose, and to control the issue of final process and receive the money collected. But these common law rules have been abrogated in most, if not all, the States, either by statute explicitly relating to the assignment of judgments, or *by the general authorization of actions in the name of the 'real party in interest,' thus investing the assignee with the complete legal title.*"

The italics are ours.

It seems, therefore, that the claim of appellant that the legal title to this judgment remained in him, is, under the Colorado statutes and the circumstances of this case, not well taken. Therefore, if our contention upon this point is correct, the appellant, according to the admission of his own counsel, cannot prevail against the appellees, Wood and Seeley, they being *bona fide* purchasers without notice.

But it is impossible to discuss or consider this case outside of the doctrine of estoppel, to which the decision has been directed above, and the appellant must, necessarily, fail in this action, unless he can succeed in convincing this Honorable Court that Wood and Seeley had notice of this secret equity in Baker. This, as the appellant well recognizes, he cannot do, except through either Parks or Seeley; and, therefore, he occupies a considerable portion of his brief in drawing fanciful inferences of what Seeley did know, or ought to have known, and of what Parks may possibly have known, and that he *may possibly* have borne such a relation to Wood and Seeley, as that he *may* have communicated to them what he *possibly* might have known or suspected in this regard, thus seeking to establish *a fact*, by merely heaping fanciful hypothesis upon hypothesis, theory upon theory, and adding bald, unsubstantiated conjecture to conjectures equally farfetched. For the purpose of attainting Seeley with the suspicion that he knew of the weakness of Hulburd's title, counsel puts a construction on one sentence in Seeley's testimony, which construction, we submit, that testimony shows to be wrong, to wit, when Wood asks Seeley why he did not buy this judgment, Seeley gave as his reason that Hulburd "talked too much," referring, evidently, to the price which Hulburd demanded for the judgment. Hulburd had placed his price at fifty or sixty cents on the dollar, which Seeley refused to pay, and gave up all idea of purchasing it, and reporting his conference with Hulburd to Wood, he gave as his reason for not buying the judgment that Hulburd talked "too much," meaning "too much" money; in

other words, that he asked too big a price for his judgment. It was certainly most natural that when similar judgments were being offered on the Denver market at from ten to twenty cents on the dollar, Seeley should consider fifty or sixty cents on the dollar "*too much*" for this judgment.

Again, appellant attempts to twist the answer of Seeley, which appears at the bottom of page 103 of the printed Record, into a statement or admission that Parks was the agent of these appellees. But, on the contrary, Seeley's whole testimony, including this answer, and Wood's testimony, and, indeed, Hulburd's testimony also, shows that if Parks was the agent of any one in this transaction, he was the agent of Hulburd, and not in any sense the agent or representative of Wood and Seeley. Seeley says, in effect, that he understood him to be the agent of Hulburd, and always thought that he got part of the $2,500, paid for the judgment; that "he was watching Parks as well as Hulburd." Now, if Parks was the agent of Seeley and Wood, why should Seeley be as careful about Parks' relation to the transaction as he was of Hulburd's?

We do not think that it is necessary on behalf of the appellees Wood and Seeley, to follow the counsel for the appellant through his lengthy argument as to the inferences justified by the evidence upon the question of the *bona fides* of the defendant Parks. We think that the evidence was entirely insufficient to show that Parks had notice of this secret declaration of trust given by Hulburd to Baker a few days after the assignment of May 25th, 1886, and we are thoroughly satisfied that the evidence shows that Parks was in no sense the agent